

RECREATION, LIBRARIES, & AUTHORITIES COMMITTEE

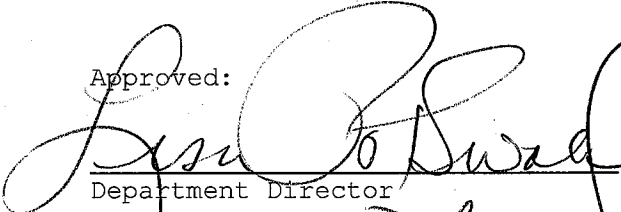
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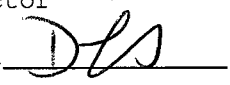
RESOLUTION AUTHORIZING AN AGREEMENT WITH SPIRIT LAKE DEVELOPMENT, LLC, D.B.A SPIRIT LAKE MARINA & RV PARK FOR THE LEASE AND OPERATION OF THE CITY'S INDIAN POINT CAMPGROUND.

CITY PROPOSAL:

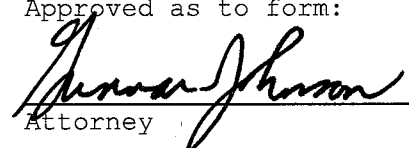
RESOLVED, that the proper city officials are hereby authorized to execute and implement an agreement with Spirit Lake Development, LLC, d.b.a. Spirit Lake Marina & RV Park, substantially the same as that on file with the city clerk as Public Document No. \_\_\_\_\_, for the lease and operation of Indian Point Campground, located at 7000 Pulaski Street, with all payments to the city to be deposited into General Fund 110, 121 (Public Administration), 1219 (Parks & Recreation), 4626 (Indian Point Campground Fees).

Approved:

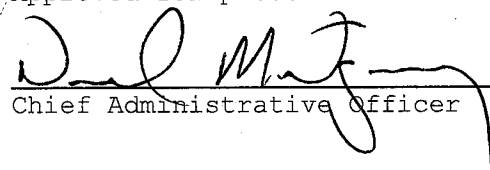
  
Department Director

Purchasing Agent 

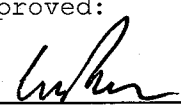
Approved as to form:

  
Attorney

Approved for presentation to council:

  
Chief Administrative Officer

Approved:

  
Auditor

PARKS/PUB ADMIN/PRCH DS:SW:le 12/01/2011

STATEMENT OF PURPOSE: This resolution authorizes a city lease and operating agreement with Spirit Lake Development, LLC, d.b.a. Spirit Lake Marina & RV Park for Indian Point Campground, located at 7000 Pulaski Street in Duluth, Minnesota.

The city's previous agreement with Willard M. Munger, Jr., d.b.a. Willard Enterprises expired December 31, 2011. The city's new agreement with Spirit Lake Marina & RV Park begins January 1, 2012, and ends December 31, 2012, and is subject to additional one year extensions. The agreement provides the city with various percentages of revenues received, depending on the source. All payments to the city to be deposited into the general fund.

The purchasing division posted a request for proposals September 13, 2011, on the city's website, and received four responses by the October 6, 2011, closing date. During the first round of interviews, a committee of city experts and a parks commissioner reviewed and evaluated proposals based on a point system and interviews, and determined that Spirit Lake Marina & RV Park was best suited for this project. A second round of interviews was conducted by three parks commissioners. The same process was used as in the first interviews, including questions asked and scoring. The results from these interviews also determined that Spirit Lake Marina & RV Park was best suited for this project. In particular, interviewers saw the Spirit Lake's marina/campground combination as promising and its huge focus on customer service as positive.

Indian Point Campground Bid File No. 11-27DS Closing Date October 6, 2011	
Proposer	City in Minnesota
Atwater Group	Duluth
Spirit Lake Marina & RV Park	Duluth
VCAP Volunteers Caring & Patrolling, Inc.	Duluth
Willard M. Munger, Jr. d.b.a. Willard Enterprises, Inc.	Duluth

## **OPERATION AND MANAGEMENT AGREEMENT**

THIS AGREEMENT, is made by and between **SPIRIT LAKE DEVELOPMENT LLC** doing business as Spirit Lake Marina & RV Park., a Minnesota corporation, hereinafter referred to as "Lessee", and the **CITY OF DULUTH**, a municipal corporation of the County of St. Louis, State of Minnesota, hereinafter referred to as "City".

### **ARTICLE 1 -RECITALS**

WHEREAS, City issued a Request for Proposal (the "RFP") for the operation and maintenance of the City's Indian Point Park and Campground. ("Services" or "Project");

WHEREAS, Lessee has represented itself as qualified and willing to perform the services set for in the RFP;

WHEREAS, Lessee submitted a Proposal in response to the RFP (the "Proposal");

WHEREAS, based on the Proposal the City has selected Lessee's services for the Project;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

### **ARTICLE 2 - PREMISES**

1. City hereby grants to Lessee, subject to all provisions of this Agreement, the right to the full access and operation of Indian Point Park and Campground including all buildings and related site facilities and amenities located at 7000 Pulaski St., Duluth, Minn. 55807 ("Premises" or "Campground"). Attached as Exhibit A is a map of the Premises.

### **ARTICLE 3 - TERM OF AGREEMENT**

1. The term of this Agreement shall commence the effective date, and shall end on December 31, 2012, unless earlier terminated as provided herein. This Agreement is subject to additional, individual one year extensions (January 1 – December 31) as herein provided. Both Parties shall meet and confer within ninety (90) days of the expiration date to evaluate Lessee's performance for the year just completed and discuss the terms and conditions of this Agreement. If City finds Lessee performance acceptable and if both Parties agree that no changes are needed and that neither party wishes to terminate this Agreement as provided in Article 19 then this Agreement shall be automatically renewed for an additional one year period. The Parties shall meet and confer in a similar manner each year within ninety (90) days of expiration, unless either party gives written notice of its intent not to renew this Agreement.

2 This Agreement may remain in effect for a maximum period of five (5) years, subject to the annual renewal provisions of Paragraph #2 above or as stated further herein unless terminated as per the terms of this Agreement.

## **ARTICLE 4 - OPERATION AND MAINTENANCE**

1. Lessee agrees to be diligent in the operation and maintenance of the Premises and to provide its Services in the best interest of the City and the camping public.

2. Lessee agrees to operate the Campground with the following schedule:

- a. Summer Season: shall commence on the first Friday nearest to May 15th and ending with the close of business the Sunday nearest to September 30th. Lessee agrees to keep open for business and to operate and maintain the Campground on a 24/7 basis, with on-site staff in sufficient numbers. The Campground office will be open daily from 8:00 am to 10:00 pm for camper check-in and checkouts, general assistance as requested or needed along with performing all routine maintenance as required. In addition, the Lessee must be available on site on a 24 hour/day basis for late night check-in and to provide assistance to campground patrons in need of emergency services.
- b. Winter Season shall commence on October 1 each year and end upon commencement of the Summer Season. During Winter Season operations, the Lessee shall on or before September 1<sup>st</sup>, immediately preceding the commencement of the Winter Season, provide the City with a daily schedule of when the Lessee will be on site.
- c. Lessee's staffing schedule is attached hereto as Exhibit B.

3. The Lessee shall be responsible for the routine maintenance of the Campground, including but not limited to the ongoing daily routine cleaning/maintenance of all indoor and outdoor spaces, washrooms, showers, lawn areas, campsites, picnic tables, campfire rings, Campground office, etc. Lessee agrees to maintain all grass or turf areas in and adjacent to the Campground in a properly mowed condition, not to exceed two inches (2") in height at any time while the campground is in operation. Lessee is also responsible for yearly extermination for bugs, spiders, rodents, removal of other pests that may be required, minor plumbing, electrical, carpentry and repairs.

4. During the Summer Season Lessee agrees to keep washroom facilities cleaned and maintained a minimum of once each day or more often as needed. During the Winter Season washroom facilities shall be closed.

5. Lessee agrees to furnish all supplies necessary in maintaining safe and sanitary conditions including but not limited to toilet tissue, paper towels, floor detergents, sanitizing solutions, and all other supplies necessary for maintaining the washroom facilities, the remainder of the wash building and the office building in a clean and sanitary manner.

6. City agrees to provide all necessary major repairs and non-routine maintenance to the structural and mechanical components of all existing buildings and plumbing and electrical systems and subject to availability of City staff, to maintain all road surfaces into, within, and out of the Campground. Lessee agrees to make all minor repairs incidental to normal reasonable maintenance. Non-routine maintenance shall be defined as major system replacement repair

items or replacement of whole systems, major building and/or assembly or upgrade of any fixed asset, road repair, locks and key changes, and winterizing water systems.

7. The Lessee agrees that it is responsible for providing notification to the City's Manager of Parks and Recreation about any problems relating to the above City responsibilities in a timely manner so identified problems can be addressed.

8. Notwithstanding anything contained herein, the City shall not be responsible for snow removal and snow plowing.

9. Lessee agrees to provide adequate security at the campground.

10. Lessee agrees to use best efforts to comply with the City's recycling efforts including the recycle guidelines established by the City's garbage hauler and the Western Lake Superior Sanitary District

11. Lessee acknowledges and agrees that there shall be no smoking or use of tobacco whatsoever in any building on the Premises.

## **ARTICLE 5 - COMMUNICATIONS**

1. The parties agree that a full and complete exchange of information is necessary for a successful relationship, and each party agrees to communicate openly and regularly with the other with regard to any services or other activities contemplated under this Agreement.

2. Lessee agrees to provide to the City's Park Manager a report on or before the 1<sup>st</sup> day of each month identifying the scheduled activities to be held at the Premises including a copy of any brochures, advertisements, flyers, sample invites etc. promoting such activities. In addition, when applicable, Lessee will provide to the City a website link relating to the activity to the City for inclusion on the City's website.

3. Lessee agrees to provide the City with a quarterly summary report identifying all activities held on the Premises during the previous quarter. The report will include statistics about the activity including date of the activity, name of activity, number of people in attendance and brief description of the activity.

## **ARTICLE 6 - CITY ACCESS**

1. Lessee shall permit the City, its officials, employees or agents to access and inspect the Premises at any time. Lessee shall not change the locks or otherwise prohibit or inhibit the City access to any portion of the Premises. Facility Management for the City shall be exclusively responsible for the design of keying systems, lock changes, key fabrication and key distribution and Lessee agrees to abide by the Key Control Policy, a copy of which shall be provided to Lessee. Lessee shall promptly return all keys to the City's Parks Manager upon termination of this Agreement.

2. In addition, Lessee shall permit the City's Facility Management's staff full access to the Premises for maintenance, repairs and upgrades of the Premises.

## **ARTICLE 7 - CONCESSIONS**

1. Lessee shall have the right to sell ice, soda, firewood, confections, ice cream, coffee, laundry detergent, recreational vehicle supplies, liquid propane and similar items associated with the operation of the Campground, and any other item that is approved for sale by the Manager of Parks and Recreation. At no time shall there be sold on the premises by the Lessee, or with his/her knowledge, acquiescence, or consent, any articles, the sale of which may be prohibited by law or prohibited without proper license or permit.

2. Lessee shall have the right to rent bicycles, canoes or other watercraft on the Premises to the general public throughout each camping season. Lessee shall be responsible to provide maintenance and repairs of all the rental equipment. Lessee shall be required to carry insurance to cover such rental operations, and the hold-harmless and indemnification provisions of Article 16 below shall apply to all aspects of such rental operation.

3. Lessee shall secure all necessary permits and licenses from the applicable governing agency including but not limited to the State of Minnesota, Department of Natural Resources for any watercraft, Department of Health for food items served, and from the City Treasurer for collection of sale taxes. The current City and State tax on all gross revenues shall be applied to the sale of all concession items and shall be payable to the City on a monthly basis.

#### **ARTICLE 8 - PAYMENTS TO CITY**

1. Lessee agrees to pay to the City, on a monthly basis, the following percentages each year this agreement remains in effect:

- a. Twenty-seven percent (27%) of the total gross revenues from all camping fees received, including deposits for the 2012-2013 camping season.
- b. Thirty percent (30%) of the total gross revenues from all camping fees received, including deposits for the 2014-2016 camping season.
- c. Fifteen percent (15%) of the total gross revenues from non-coin concession sales.
- d. Fifteen percent (15%) of the total gross revenues from the rental of canoes, bikes, kayaks, small fishing and pontoon boats.
- e. Fifteen percent (15%) of the total gross revenues from all boat rentals by registered Campground patrons through Spirit Lake Marina & RV Park
- f. Twenty-five percent (25%) of Lessee's total gross profits from third party coin operated vending equipment.

2. The payments specified above shall be paid to the City on or before the twentieth (20th) day of the month and will cover all sales for the preceding month. Payment shall be made to the City of Duluth and directed to: City Treasurer at 411 W. 1st Street, Duluth, MN 55802. All payments to be deposited into Fund110-121-1219-4626 (General Fund, Public Administration Department, Parks & Recreation, Indian Point Campground Fees).

#### **ARTICLE 9 - MARKETING AND ADVERTISING**

1. Lessee shall be diligent in the marketing and advertising of the services available on the Premises. Lessee will utilize appropriate marketing and advertising outlets such as electronic/web based media, magazine advertising, yellow page listing, brochure printing quarterly Duluth publication, etc. to maximize the Campground's exposure and rental potential.

All marketing and advertising shall be at Lessee cost and expense. Minimum Lessee advertising, at Lessee's expense, shall include at a minimum:

- a. Listing and ad in the current annual published Visit Duluth brochure
- b. An annual ad in the Duluth News-Tribune's "Visitor's Guide"
- c. Listing in the Explore Minnesota Guide and on its website for statewide campground listings
- d. Ad placement at least one of the quarterly published Duluth publications (maybe in conjunction with Spirit Mountain)
- e. Booth space at the following recreational shows:
  - i. Duluth Boat Sports and Travel Show
  - ii. Minneapolis RV Show (held at the Minneapolis Convention Center)
  - iii. Minneapolis Boat Sport & Camping Show (Minneapolis Convention Center)
- f. Listing in Woodall's Campground Directory
- g. Development and printing in sufficient quantity of an Indian Point Campground brochure detailing the services and amenities available at Indian Point Campground along with current rate pricing information and directions to the campground. Sufficient quantities of such brochure shall be distributed, as needed or requested, by Lessee to various points of entry into the City of Duluth supplying tourist information and
- h. Inclusion on at least one social media outlets – such as Facebook, Twitter, e-mail marketing, etc

All marketing efforts must comply with all applicable laws, rules and guidelines governing such activities.

2. Advertising documentation and any other marketing and advertising in other sources chosen by Lessee must be provided to the City's Park Manager.

3. In addition, Lessee will be responsible for maintaining and updating as necessary the Indian Point Campground's website ([www.duluthindianpointcampground.com](http://www.duluthindianpointcampground.com)). All content placed on the website must be pre-approved by the City's Parks Manager. The website shall be limited to Campground information only; placement of any non-Campground related information is prohibited. The website and all content is the property of the City.

## ARTICLE 10 - CAMPING RATES AND RESERVATIONS

1. Lessee agrees to charge camping rates which, considering operating costs and a reasonable profit, are reasonable, appropriate, and comparable to campgrounds with similar facilities and services. Camping fees for 2012, shall be as follows:

Campsites with:	Day Rate	Week Rate	Month Rate
Water, Electric & Sewer	\$36.00	\$216.00	\$800.00

<b>Campsites with:</b>	<b>Day Rate</b>	<b>Week Rate</b>	<b>Month Rate</b>
Water & Electric	\$32.00	\$192.00	\$725.00
Electric Only	\$30.00	\$175.00	\$650.00
No hook-up or tent site	\$25.00	\$150.00	\$N/A
Each extra tent	\$15.00	\$ 90.00	\$390.00
Extra vehicles (1 vehicle per campsite)	\$ 5.00	\$ 30.00	\$ 30.00

**Site Allowances:**

- Only one tent/ R.V./ pop-up vehicle per site.
- A second tent/ R.V./ pop-up on a site will be charged one additional site fee per night.

Rates may be adjusted prior to each camping season to reflect the current market condition for camping in the Duluth area upon the written approval of the Manager of Parks & Recreation.

Lessee shall require and collect a deposit equal to one night's camping to hold reservations. The deposit will be applied to the camping fees at time of check-in.

Lessee is required to adopt and enforce a campground policy ("Campground Policy") prior to the 2012 camping season that outlines the camping patron's responsibilities including but not limited to pet owner responsibilities. The Campground Policy shall include actions taken if policy is violated. The parties acknowledge that Lessee's Campground Policy has been submitted to the City's Park Manager for review and approval by the City. A copy of the Campground Policy is attached as Exhibit F.

Lessee shall provide a secure socket layer website for on-line reservations and shall be in compliance with all applicable laws, rules and guidelines governing such transactions. Lessee shall maintain a reputable vendor to provide an internet credit card transaction gateway.

Lessee acknowledges and agrees that all reservations and all reservation data (except financial information) collected during the Term of this Agreement are the property of the City and Lessee shall hold all information associated with the reservations in strict confidence and all such information shall not be used by Lessee except to fulfill its obligations under this Agreement. Lessee shall not utilize reservation information stored by Lessee and provided by City to communicate with any individual except to provide stay related information to the individual.

## **ARTICLE 11 SPECIAL EVENTS**

1. All requests for special events to be held at the Premises shall be directed to Lessee. Lessee shall be responsible for approving any special event requests and coordinating all aspects of the special event including ensuring that the necessary permits and insurance are obtained. All special events requiring insurance shall name the City and Lessee as additional insureds. Lessee shall be responsible for obtaining a copy of the Certificate of Insurance evidencing such coverage. Lessee shall be responsible to provide, at least two working days prior to the commencement of the special event, copies of said Certificates of Insurance to the City's Park Manager.

## **ARTICLE 12 - UTILITIES**



1. Lessee shall make proper billing application for all necessary utilities such as electric service, gas, City water service, sewage, trash collection, etc. Lessee shall upon request provide monthly evidence of the timely payment of all utility bills. During the Winter Season, seasonal water will be discontinued and discharge of grey water is limited to the main dump station.

2. City shall provide one business telephone line (218-628-4977) for local calls only and one toll free number (1-855-777-0652) at the Campground, for exclusive campground and Lessee use. Said telephone line shall also be listed in the current Qwest directory white business pages and yellow pages. City will provide basic cable internet to the Campground plus the cost of installing the necessary hardware for wireless service to the Campground

### **ARTICLE 13 - RECORDS**

1. Lessee agrees to maintain detailed, accurate, and complete records of all monies received and disbursed in the operation of the Campground and Lessee's related activities. Such books and records shall be available to the City Auditor for inspection and audit upon request. The City agrees to provide a minimum of 24 hours notice of such request. In addition, Lessee shall prepare an itemized monthly financial report of all monies taken in and disbursed in the Campground operations and shall submit such detail report in form approved by the City Auditor as attached as Exhibit C, to the City along with all payment provided in Article 8. Lessee shall provide to the City a copy of the Schedule C Federal Income Tax form as filed with the Internal Revenue Service. Such form shall be provided prior to the start of each Summer camping season and shall include all applicable campground financial information from the previous year. Lessee shall also provide to City a monthly occupancy report in a form mutually agreed upon between the parties.

### **ARTICLE 14 - ALTERATIONS OR IMPROVEMENTS**

1. The Lessee may not make any temporary or permanent improvement to any part of the campground, its buildings, or its facilities without securing prior written approval of the City's Facilities Manager. A Project Proposal Form must be submitted to City Hall, Attn: Parks Manager, 411 W 1st Street, Duluth, MN 55802. A copy of the Project Proposal Request is attached to this Agreement as Exhibit D. Lessee's improvements shall be maintained by Lessee and unless otherwise agreed upon in writing, said improvements shall become the property of the City. Lessee shall be responsible for any and all operational costs and maintenance of such improvements, installations, and facilities and shall operate them in a safe manner. No construction, alteration, or improvement shall begin until approved as provided by this paragraph and all necessary building permits are secured. All construction shall conform to the State, local and other applicable Building Codes. These documents shall be submitted to the City at least forty-five (45) days before the planned commencement of the work.

2. Lessee agrees that not less than thirty (30) days prior to commencement of any construction, alteration or improvement on said Premises, Lessee will provide the City with sufficient proof of required insurance, including worker's compensation. Such proof of

insurance must be approved by the City Attorney before the commencement of any construction hereunder.

## **ARTICLE 15 - INSURANCE**

1. Lessee shall provide evidence of insurance for all its activities on the Premises. A Comprehensive General Liability Insurance policy shall be maintained in force by Lessee throughout the life of this agreement in an amount not less than One Million Five Hundred Thousand Dollars (\$1,500,000.00) for bodily injuries and in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for property damage or One Million Five Hundred Thousand Dollars (\$1,500,000.00) single limit coverage. Such coverage shall include all Lessee activities occurring on or within the Premises whether said activities are performed by employees or agents under contract to Lessee. Such policy of insurance shall be approved by the City Attorney and shall contain a condition that it may not be cancelled without thirty (30) days written notice to the City of Duluth. The City of Duluth shall be named as an additional insured on said policy of insurance required by this paragraph.

2. Lessee shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.

3. Lessee shall provide Certificates of Insurance evidencing such coverage with 30-day notice of cancellation, non-renewal or material change provisions included. The City does not represent or guarantee that these types or limits of coverage are adequate to protect the Lessee's interests and liabilities.

4. The City reserves the right to require Lessee to increase the coverages set forth above and to provide evidence of such increased insurance to the extent that the liability limits as provided in Minn.Stat. Sec. 466.04 are increased.

5. The City does not intend to waive any legal immunities, defenses, or liability limits that may be available.

6. When using the "Acord" Certificate form cancellation provisions, the words "endeavor to" on Line 2 must be deleted. As an additional insured under the contract, the City has contractual rights far exceeding that of a certificate holder. Therefore, additional named insured endorsement shall read as follows: "This policy insures the named insured and the City of Duluth and will be primary and not contributory with City of Duluth coverage." The City of Duluth is an additional insured not subject to the "other insurance" condition or other policy terms which conflict with the agreement between the named insured and the City of Duluth.

7. The 2004 edition of ISO Additional Insured Endorsement CG 20 10 is not acceptable. If the CG 20 10 is used, it must be a pre-2004 edition.

8. The City shall not be liable to Lessee for any injury or damage resulting from any defect in the construction or condition of the Premises, nor for any damage that may result from the negligence of any other person whatsoever.

## **ARTICLE 16 - HOLD HARMLESS AND INDEMNIFICATION**

1. Lessee hereby agrees to indemnify, save harmless, and defend the City and its officers, agents, servants and employees from and against any and all claims, suits, loss, judgments, costs, damage and expenses asserted by any person by reason of injury to or death of

any and all persons , including employees or agents of the City or Lessee, and including any and all damages to property to whomsoever belonging, including property owned by, leased to, or in the care, custody, and control of Lessee, arising out of, related to or associated with the use, management, maintenance or operation of the premises by Lessee or performance of its obligations under this Agreement.

2. Lessee will indemnify the City for any damage to any City property on the premises caused by Lessee, its agents or employees.

## **ARTICLE 17 - INCIDENT REPORTS**

1. Lessee shall promptly notify the City's Parks Manager aware in writing of any incident of injury or loss or damage to the property of City or any visitors, participants or invitees occurring within the Premises during the term of this Agreement. Such written report shall be in a form acceptable to the City's Risk Manager. A copy of the City's form of Incident Report is attached hereto as Exhibit E.

## **ARTICLE 18 - DEFAULT**

1. Should Lessee be in default under any terms or conditions of this Agreement City shall provide Lessee with notice of said condition of default, in writing, and shall allow Lessee thirty (30) days to cure any defaults set forth therein. If such default is not cured to the satisfaction of City within thirty (30) days, City may immediately terminate this agreement.

2. Lessee acknowledges and agrees that a default of this Agreement includes the receipt by City of Significant Service Complaints (as hereinafter defined) from campers. For purposes of this Agreement, Significant Service Complaints means, in connection with any Camping Season, the receipt by City of complaints regarding the quality, nature, or performance by Lessee and/or its agents, vendors, contractors, subcontractors or employees of any services described in the Agreement from more than ten percent [10%] of the registered campers. In the case of Significant Service Complaints, City shall have the right to terminate this Agreement. In no event shall complaints relating to the costs/rates for camping, concessions or items sold on-site be subject to this section.

## **ARTICLE 19 - TERMINATION OF AGREEMENT**

1. If Lessee fails promptly to pay to the City any amount due under the terms of this Agreement, or violates any other terms or conditions of this Agreement, the City may immediately or at any time after such default, and subject to the provisions of Article 18, terminate this Agreement by serving upon Lessee a notice of termination thereof, either personally or by certified mail.

2. Lessee may cancel this agreement, only during the period of October 1 – December 31 of any year this agreement remains in effect, by giving thirty (30) days written notice to City, said notice to be served either personally or by certified mail. In addition to the provisions above, the City may also cancel this agreement for a public purpose, as determined by the Manager of Parks & Recreation, by giving one hundred eighty (180) days written notice to Lessee.

3. Lessee shall, within two (2) weeks after the termination of the Agreement, remove from the premises all of Lessee's personal property, goods and effects, and on failure to do so, the City will remove such property, goods, and effects to be stored at the cost and expense of Lessee. The City shall have a lien thereon for the cost and expense of such removal and the storage of such goods, property, and effects. Such property shall be deemed abandoned by the Lessee after thirty (30) days if not claimed by the Lessee and all costs associated with such storage paid. In the case of abandonment, all such property shall become the property of the City.

## **ARTICLE 20 - INDEPENDENT CONTRACTOR**

1. For all purposes in the performance of this agreement, Lessee shall be declared to be an independent contractor. This agreement shall not be construed to create any relationship of joint venture, joint enterprise, agency or partnership between Lessee and City. Lessee expressly waives any right to assert the status of joint venture, joint enterprise, agency or partnership in any dispute arising between the Parties. Neither Lessee or its employees shall be entitled to any workers compensation, unemployment benefits, PERA, or other City employment benefit nor shall they be considered employees, agents, co-partners, joint venture or joint enterprise participants with the City for any purpose.

## **ARTICLE 21 - GENERAL PROVISIONS**

1. City agrees to provide two (2) campsites to Lessee at no cost for Lessee's personal use.

2. Lessee agrees to operate the Campground in strict compliance with the laws, rules and regulations of the United States, of the State of Minnesota, St. Louis County and the City of Duluth. Lessee agrees to procure at its own expense all licenses and permits necessary for the carrying out of the provisions of this Agreement.

3. Lessee accepts total financial responsibility for any operating deficit incurred during its operation of the Campground pursuant to this Agreement.

4. Lessee shall not assign this agreement, nor any of the rights given to it hereunder to any person, association, partnership, or corporation, without first obtaining the written consent of the City, and that any such assignment entered into without such consent shall be void.

5. The waiver by the City or by Lessee of any breach of any term, covenant, or condition herein contained, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition herein contained.

6. This instrument may be amended or modified only by an instrument of equal formality, signed by all duly authorized representatives of the respective Parties.

7. The City shall not be responsible to Lessee for any injury or damage resulting from any defect in the construction or condition of the herein described premises.

8. This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota.

9. This Agreement embodies the entire understanding of the Parties and there are no further or other agreements or understandings, written or oral, in effect between the Parties relating to the subject matter hereof.

10. No provision of this Agreement shall inure to the benefit of any third person so as to constitute any such person as a third-party beneficiary of this Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

11. The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

## ARTICLE 22 – NOTICES

1. Unless otherwise provided herein, notice to the City or Lessee shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

City of Duluth  
Parks and Recreation Division  
Attention: Manager  
12 East Fourth Street  
Duluth, MN 55805  
(218) 730-4309

Spirit Lake Development, LLC  
121 Spring Street  
Duluth MN 55808  
(218)-349-3807

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers, duly authorized.

### CITY OF DULUTH

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk  
Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City Attorney

### SPIRIT LAKE DEVELOPMENT LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Countersigned:

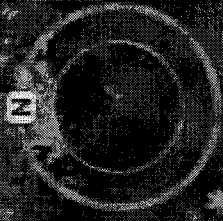
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City Auditor

## **EXHIBITS**

- Exhibit A - Map of the Premises
- Exhibit B – Lessee’s Staffing Schedule
- Exhibit C - Form of itemized monthly financial report
- Exhibit D – City’s Project Proposal Request
- Exhibit E - City’s form of Incident Report
- Exhibit F – Campground Policy

EXHIBIT A



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Google earth

Imagery Date: 8/28/2010

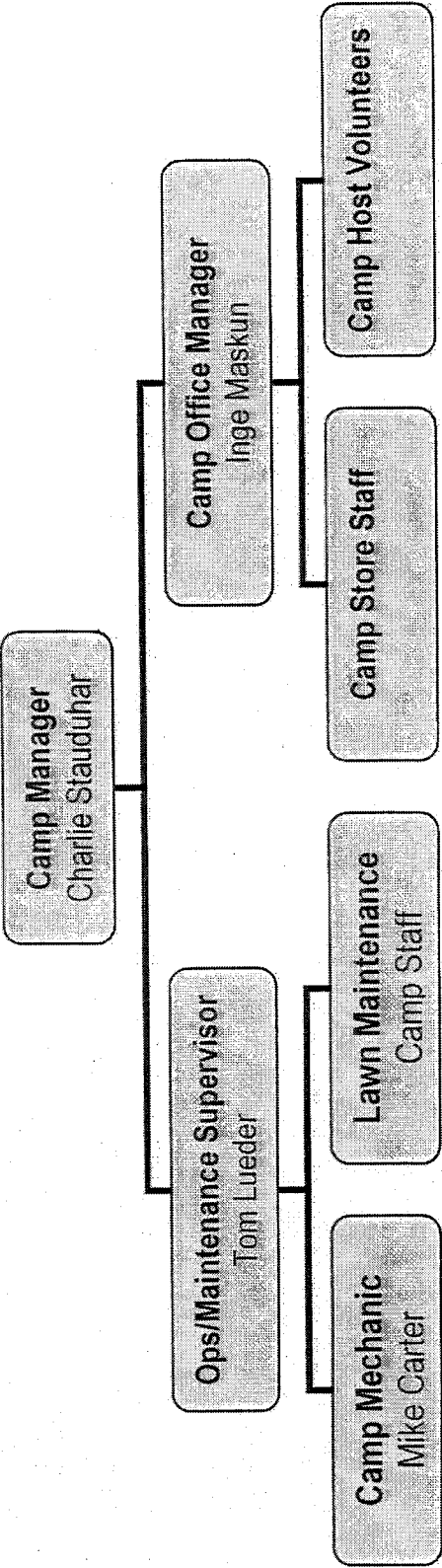
1994

46°43'16.83"N 92°11'03.15"W elev 626 ft

Eye alt 1880 ft



EXHIBIT B



Memorial Day to Labor Day

Two (2) Host Families

→ One of which will always be on hand after hours

Store/Staff Hours

→ Sunday-Thursday: 8am-6pm

→ Friday-Saturday: 8am-8pm

**EXHIBIT C**  
**Indian Point Campground**  
**Monthly Financial Report for XXXXX 2012**

	Current Month	Year to Date	% of Budget	Previous Year to Date	Change	Budget
<b>Revenues:</b>						
<b>Camping Revenue:</b>						
Water, Electric & Sewer					-	
Water & Electric					-	
Electric Only					-	
No Hook-up or Tent Site					-	
Each Extra Tent					-	
Extra Vehicles					-	
<b>Total Camping Revenue</b>	-	-		-	-	-
<b>Other Revenue:</b>						
Non-Coin Concession Sales					-	
Canoe Rental					-	
Bike Rental					-	
Kayak Rental					-	
Small Fishing Boat Rental					-	
Pontoon Boat Rental					-	
Boat rentals through Spirit Lake					-	
Marina & RV Park					-	
Coin Operated Vending					-	
Equipment					-	
<b>Total Other Revenue</b>	-	-		-	-	-
<b>Total Revenue</b>	-	-		-	-	-
<b>Expenses:</b>						
Advertising					-	
Wages					-	
Payroll Taxes					-	
Credit Card Fees					-	
Dues & Subscriptions					-	
Insurance					-	
Repairs					-	
Supplies					-	
Licenses					-	
Telephone					-	
Firewood Purchased					-	
Ice Purchased					-	
Electricity					-	
Garbage					-	
Equipment					-	
City Share of Revenue					-	
<b>Total Expenses</b>	-	-		-	-	-
<b>Net Income</b>	-	-		-	-	-

# INDIAN POINT CAMPGROUND MONTHLY FINANCIAL REPORT

MONTH OF \_\_\_\_\_

		<u>Total Revenue</u>	<u>City Lease Fee</u>
Monthly Camping Fees & Deposits	\$	-	
27% Lease fee to City (2012-13) Article 8, 1. a & b.		27%	\$ _____ -
Monthly Non-Coin Concessions	\$	-	
15% Fee to City Article 8, 1. c.		15%	\$ _____ -
Monthly Campground Rentals	\$	-	
15% Fee to City Article 8, 1. d.		15%	\$ _____ -
Monthly Spirit Lake Marina Rentals	\$	-	
15% Fee to City Article 8, 1. e.		15%	\$ _____ -
Monthly Coin Operated Vending Equipment Gross Profits	\$	-	
25% Fee to City Article 8, 1. f.		25%	\$ _____ -
<b><u>TOTAL DUE TO CITY</u></b>			<b><u>\$ _____ -</u></b>

**REPORT IS DUE TO THE CITY BY THE 20TH DAY OF THE MONTH**

**Please attach an itemized monthly profit/loss statement**

Please send to: \_\_\_\_\_

City Treasurer

411 West First St.

Duluth, MN 55802

## EXHIBIT D

### CITY OF DULUTH - PROJECT PROPOSAL REQUEST FORM

Use this form to propose improvement projects to any City facility. A City facility includes both building and grounds. It is intended to be used by external community groups, organizations and internally generated requests.

PROJECT (Brief Description) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LOCATION (Name of City Park, Building) \_\_\_\_\_

ADDRESS: \_\_\_\_\_

Attach Sketch Diagram ☐ yes, or Add Drawing on back of this form, ☐ yes

NAME OF GROUP OR ORGANIZATION PROPOSING PROJECT: \_\_\_\_\_

Contact Person	Name _____	Home Phone	_____
	Address _____	Work Phone	_____
	City, State, Zip _____	Cell Phone	_____
		E-mail	_____

PROJECT FUNDING: Do you have funding for this project?

☐ YES, indicated Funding Sources, Amounts and Total Project Cost \_\_\_\_\_  
\_\_\_\_\_

☐ NO, COMMENTS \_\_\_\_\_  
Total Project Cost \_\_\_\_\_

ENERGY USE: Do you think there will be a change in the use of energy for any energy type listed here because of this project?

☐ YES ☐ NO ☐ Not Sure Check all energy types where use will change:

ELECTRICITY (kWh) \_\_\_\_\_ GAS (Therms) \_\_\_\_\_ OIL (gallons) \_\_\_\_\_  
STEAM (Pounds) \_\_\_\_\_ WATER and SEWER (CCF) \_\_\_\_\_

Person completing and submitting this request: PRINT NAME: \_\_\_\_\_  
Phone \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

SUBMIT COMPLETED FORM to: Tari Rayala; Architecture & Facility Management; 1532 West Michigan Street;  
Duluth, MN 55806; [trayala@duluthmn.gov](mailto:trayala@duluthmn.gov); (218) 730-4434

(For city use only) Action Taken:

Forward to: CCP committee - YES ☐ NO ☐

CCP (Cities for Climate Protection) Advisory Committee Review: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Project Review Team: Date \_\_\_\_\_

Accepted: \_\_\_\_\_ Rejected: \_\_\_\_\_ Comments: \_\_\_\_\_

Notifications sent to: Submitter \_\_\_\_\_ Date: \_\_\_\_\_ Dept. Director \_\_\_\_\_ Date: \_\_\_\_\_



Department of Public Administration - Maintenance Operations  
Architecture, Facility Management Services and Street Light Utility

1532 West Michigan Street • Duluth, Minnesota • 55806

PHONE: 218-730-5730 • FAX: 218-723-3560

[tgroshong@duluthmn.gov](mailto:tgroshong@duluthmn.gov)

## INTER-DEPARTMENT CORRESPONDENCE

DATE: March 11, 2011

TO: Department Directors & Division Managers  
Community Clubs and Organizations

FROM:  Terry L. Groshong, AIA  
City Architect/Facility Manager

SUBJECT: Project Request and Approval Process

Each year there are numerous requests for improvement projects on City Property. The projects and related funding are pursued through a variety of avenues such as additional capital requests not included in the City's 5-year Capital Improvement Program (CIP), requests to the City Facilities Management or Parks and Recreation Department, Community Development Block Grant Program (CDBG), and others. These avenues and the different people and requirements of each process have caused some confusion. The result has been delays and, on occasion, rejection of funded projects.

For example, acquiring funds for a project through CDBG, a DNR grant, fundraising, or donations does not guarantee project acceptability if the project is being considered on City property? It must also receive recommendation and approval by the appropriate City officials. There is no assurance that this will occur after the fact, and therefore, City approval should occur in advance of, or at least concurrent with pursuing funding.

The City departments most actively involved with projects have developed a system that will result in better communications, tracking, and processing of project requests. It establishes Facilities Management as the City entity that will initiate the process once a request has been received. Facilities Management (FM) is charged with identifying the responsible and accountable "Project Team" and facilitating the process. At any point in the process, FM can be contacted to respond to questions or concerns that are not being addressed by the Project Team.

The intent of this process is to expedite decision making, clarify the approval process, reduce confusion and miscommunication, and provide a central point of contact to respond to questions and concerns. This process may need modification to improve upon what has been developed. Your input will be critical in that sense.

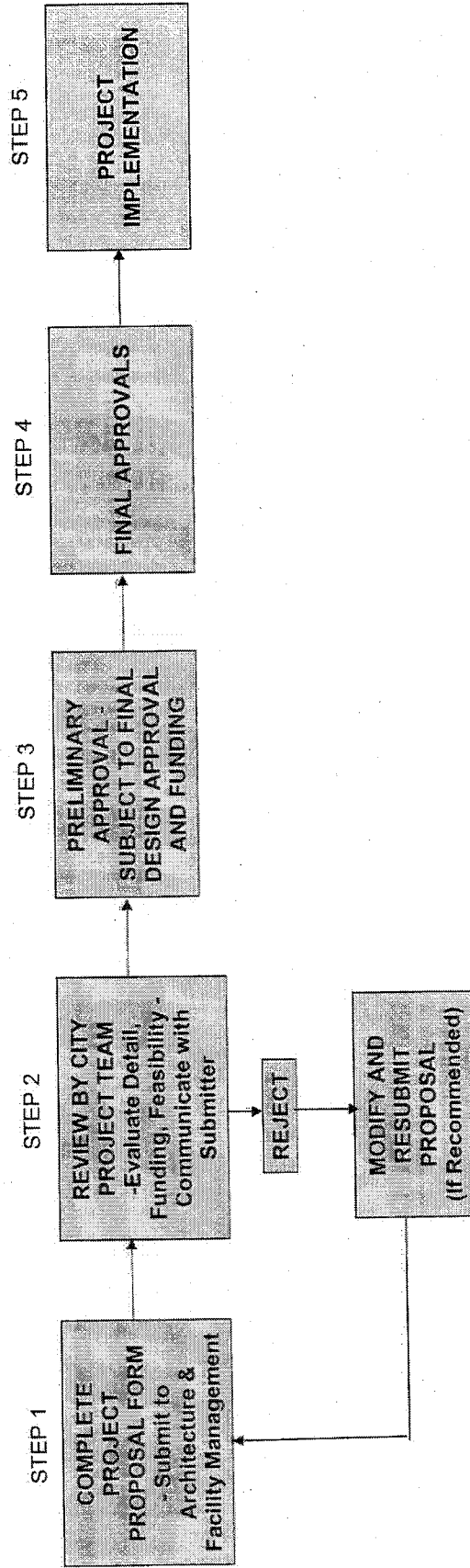
Enclosed you will find two documents, 1) the City of Duluth Project Proposal Request Form and 2) the Project Request and Approval Process sheet. The Request Form activates the Request and Approval Process which is diagrammed to reflect how the process works. Implementation of this process is effective immediately.

Your cooperation and assistance is requested and much appreciated. If you have any questions, please contact Tari Rayala at 730-4434.

# CITY OF DULUTH

## PROJECT REQUEST AND APPROVAL PROCESS

### City Facilities (Buildings & Grounds): Process For New Capital and/or Improvement Projects Which Propose To Make Any Physical, Non-Maintenance Improvement



**Step 1: Project Proposal:** Project Proposal Form to be completed by designated or authorized representative of City Department, Community Club, Community Group, Athletic Organization, etc. Include as much detail as possible. Submit completed Project Proposal Form to Tari Rayala in Architecture & Facility Management who will review your Project Proposal and consider any existing master plans, guidelines, restrictions, etc. to determine initial project feasibility.

**Step 2: Project Review:** Project evaluation by City's Internal Project Review Team. This team was established by Administrative Services based on project type and scope and will consist of City staff authorized to review specific projects. The Project Review Team will meet as needed to gather, review, and/or revise project information and requirements. Feasible projects without identified funding or with insufficient funding will receive further review to determine eligibility for funding sources such as CDBG, CIP, etc., and will proceed through the appropriate funding review and approval process. In addition, review by appropriate Boards and Commissions shall occur as needed. Projects are either approved, modified, or rejected at this step. Outcome of this step communicated back to submitter with notification of the next step of the process.

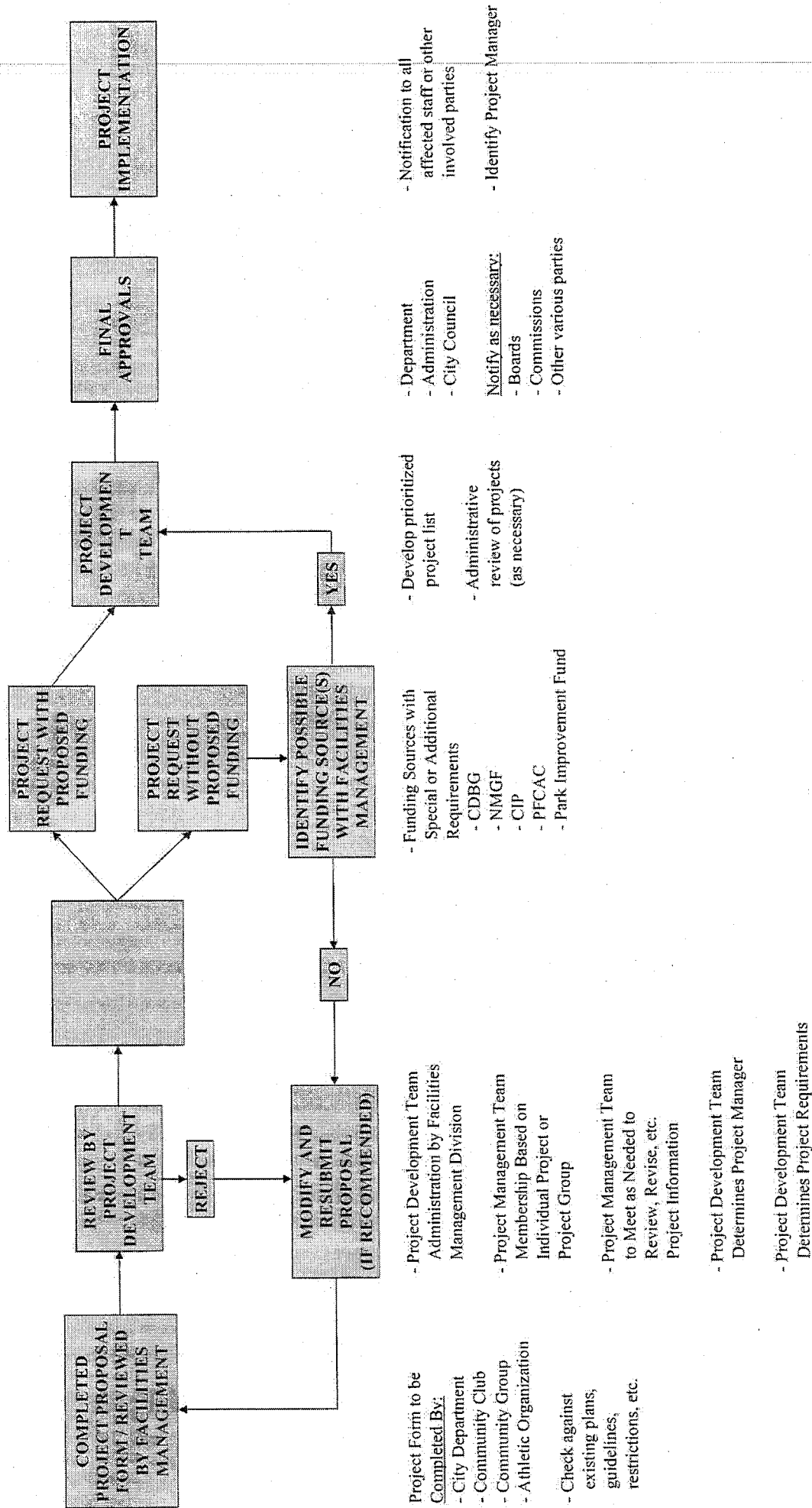
**Step 3: Preliminary Approval:** Projects with approved funding are returned to project submitter to proceed with final project design including detailed plans necessary for construction.

**Step 4: Final Approval:** Final review of completed project design. Final approvals as needed from Department, Administration, City Council.

**Step 5: Implementation:** Notification to all involved parties, including City staff, with project "Notice to Proceed". Identification of Project Manager with responsibility for project oversight during project construction to completion and final acceptance.

## PROJECT REQUEST AND APPROVAL PROCESS

City Facilities (Buildings & Grounds): Process For Capital and/or Improvement Projects Which Propose To Make Any Physical, Non-Maintenance Improvement

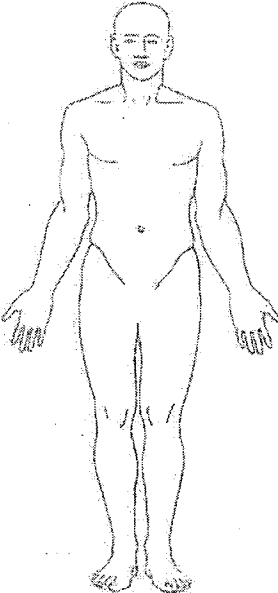
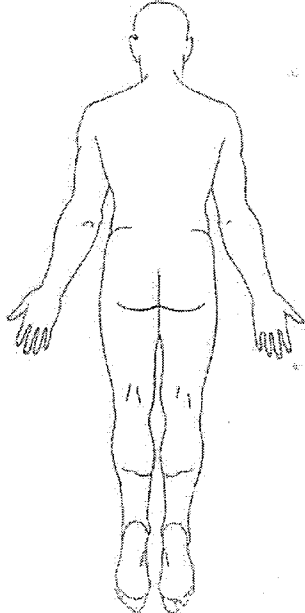


Note: Once adopted, this process must be effectively communicated to all City in-house staff and external organizations.

# EXHIBIT E

<b>CITY OF DULUTH</b>
<b>INCIDENT REPORT</b>

Supervisor and injured employee to complete within 24 hours of incident/injury.  
 Please print clearly and fax completed form to: 1-866-286-5258

Company Name: Duluth Police Dept.		Dept. / Div: Patrol		<input type="checkbox"/> Employee <input type="checkbox"/> Non-Employee	
Last name:		First:		Middle initial:	
Address:					
City:		State:		Zip code:	
Phone:					
Incident Date:		Time:		Left work:	
Returned:		Lost time		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Explanation for Injury/Incident: _____					
Incident investigation conducted: <input type="checkbox"/> Yes <input type="checkbox"/> No					
Date supervisor notified:			Date report completed:		
Supervisor's name:					
Names / Phone #'s of witnesses: _____					
Was there a: Safety violation <input type="checkbox"/> Machine malfunction <input type="checkbox"/> Motor vehicle accident <input type="checkbox"/>					
Supervisor's comments: _____					
What actions have been taken to prevent recurrence? _____					
<b>CAUSE</b> <input type="checkbox"/> Slip and Fall <input type="checkbox"/> Struck by equipment <input type="checkbox"/> Lifting or moving <input type="checkbox"/> Caught (In, on or between) <input type="checkbox"/> Needle puncture <input type="checkbox"/> Object in eye (Right <input type="checkbox"/> Left <input type="checkbox"/> <input type="checkbox"/> Repetitive / Overuse <input type="checkbox"/> Other		<b>MARK AREAS OF INJURY BELOW</b> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <b>Front</b>   </div> <div style="text-align: center;"> <b>Back</b>   </div> </div>			
<b>TYPE OF INJURY</b> <input type="checkbox"/> Scrape / Bruise <input type="checkbox"/> Sprain / Strain <input type="checkbox"/> Puncture wound <input type="checkbox"/> Cut / Laceration <input type="checkbox"/> Concussion <input type="checkbox"/> Bite <input type="checkbox"/> Chemical burn / Rash / Breathing difficulties <input type="checkbox"/> Other <input type="checkbox"/> No apparent injury					
Employee referred to: Clinic <input type="checkbox"/> Hospital ER <input type="checkbox"/> Refused to see MD <input type="checkbox"/>					
DR / Clinic			Phone Number:		
Supervisor's signature:			Date:		
Employee's signature:			Date:		

NOTE: Complete side 2 if Vehicle, Equipment, or Property Damage



<b>INCIDENT LOCATION:</b>			
<b>POLICE CALLED?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		<b>Police Traffic Accident Report ICR#:</b>	
<b>City Vehicle, Property, or Equipment Involved</b>	Description: _____ Vehicle #, Make, Model, Year: _____ Describe Damage: _____		
<b>Non-City Vehicle, Property, or Equipment</b>	Owner Name: _____ <input type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Other Owner Address/Phone #: _____ Vehicle License #: _____ Color: _____ Make/Model: _____ Year: _____ Describe Damage: _____		
<b><u>Weather Conditions</u></b> <input type="checkbox"/> Clear <input type="checkbox"/> Wind <input type="checkbox"/> Rain <input type="checkbox"/> Cloudy <input type="checkbox"/> Fog <input type="checkbox"/> Sleet <input type="checkbox"/> Snow		<b><u>Roadway Conditions:</u></b> <input type="checkbox"/> Dry <input type="checkbox"/> Mud <input type="checkbox"/> Wet <input type="checkbox"/> Paved <input type="checkbox"/> Snow <input type="checkbox"/> Unpaved <input type="checkbox"/> Ice	
		<b><u>Light Conditions:</u></b> <input type="checkbox"/> Night <input type="checkbox"/> Day <input type="checkbox"/> Good <input type="checkbox"/> Poor	
		<b><u>Other:</u></b> Approx. Temp: _____ Estimated Speed: _____ mph Vehicle: <input type="checkbox"/> Loaded <input type="checkbox"/> Empty What was load: _____ Drug and/or Alcohol Test? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
<b>MISCELLANEOUS COMMENTS:</b> _____			

Sketch below how vehicle accident occurred (Give street names, direction of travel, locations of vehicles, objects and traffic control devices) ↑ North